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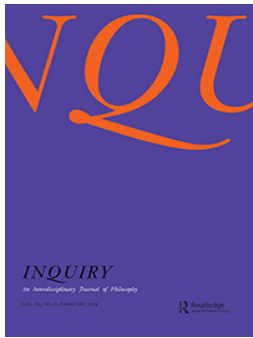
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Epstein on groups: virtues of the status account

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ABSTRACT

Epstein compares models of group agents that focus on their internal organization to models that focus on the statuses they have. He argues that status models are inadequate because agency is not something that can be attributed by fiat. Even if this is true, however, certain agential powers can be attributed to group agents. I argue that Epstein's arguments stand to benefit a lot from recognizing that some group agents have statuses and constitute corporate agents. For instance, only corporate agents can exist without having members.

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In the past few decades, social ontology has established itself firmly as a thriving discipline within philosophy. The discipline addresses a wide range of topics that includes but is not limited to joint action, group agency, and social institutions. A number of philosophers including Michael Bratman, Margaret Gilbert, Philip Pettit, John Searle, and Raimo Tuomela have put forward theories about such phenomena.¹ In his book *The Ant Trap* Brian Epstein takes a step back and scrutinizes the methodologies that philosophers such as these employ. Epstein's main complaint is that these philosophers pursue a one-size-fits-all strategy. As a consequence, they are not sufficiently sensitive to the diversity of social phenomena. Furthermore, they often fail to recognize that the philosophical questions that should be asked are diverse and that the theories on offer cannot answer all of them. This message is more than welcome. Epstein's criticisms are perceptive and powerful. I hope that they will inspire people working on these topics to

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¹These philosophers are sometimes referred to as 'the Big Five' (Chant, Hindriks, and Preyer 2014).

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develop richer theories with a clearer conception of which questions these theories can and cannot answer.

Epstein's book concerns the ontology of social entities. A central question about the ontology of money is this: Why are certain pieces of paper dollar bills? In response, one might specify the conditions that a piece of paper has to meet in order to be money in the United States. Such an answer attempts to specify the grounding conditions of money, and should, for instance, involve a reference to the Federal Reserve. Epstein argues forcefully that there is a further question to ask: Why are these the grounding conditions for money in that context? A possible answer to this question concerns collective acceptance of a rule that features the conditions specified. Epstein refers to such conditions as anchoring conditions. He argues that the distinction between grounding and anchoring conditions has been ignored, and that it demands our attention. He goes on to develop a rigorous perspective on the distinction. As Epstein (2016) notes, most commentators focus on this issue (Guala 2016). In light of this, I will focus on other aspects of Epstein's view and address a number of the claims he makes about social groups (see note 5 for a comment on grounds and anchors).

In Chapters 17 and 18, Epstein discusses two kinds of models of group agents: social integrate models and status models. Whereas the former focus on the way individuals can come to form an integrated whole, the latter zoom in on the powers or statuses that people attribute to particular collections of individuals. List and Pettit (2011) have proposed an influential social integrate model. Searle (1995, 2010) is a proponent of the status approach. Epstein is quite critical of status models. As he understands these models, they attribute agency – in my terminology – by fiat. This certainly is a problematic idea. Epstein is right to point out that a full-blown group agent is, in his terms, 'a system of practical activity' (265, 272).² And this is not a property that can be attributed by fiat. Instead, it requires an appropriate internal organization. At least Searle's version of the status model is silent on this core feature of group agents, and is as a consequence Searle is vulnerable to Epstein's criticism.

I will argue, however, that status models are of crucial importance for appreciating a distinction between kinds of group agents. Some group agents can be exhaustively characterized in terms of their internal organization. Other group agents are not only appropriately organized, but they also have a status that is recognized by agents external to the group agent at issue. I refer to such agents as 'corporate agents' (Hindriks 2008). Corporate agents include,

²Unless otherwise indicated, page numbers pertain to Epstein (2015).

for instance, universities and corporations. The status of a corporate agent bears on the kind of activities it can undertake, such as conferring a degree on a student or issuing stock. Thus, status models can capture an important feature that many group agents in contemporary societies have. Epstein fails to appreciate the way in which integrate models and status models can be seen as complementary. I go on to discuss his worry that people might attribute statuses to collections of individual agents that do not form an appropriate system of practical activity. At least at first sight, it seems implausible that such collections of individuals are group agents. Even though this worry needs to be taken seriously, I argue that statuses can in fact be assigned to collections of individuals that are not full-blown group agents.

1. Integrate models

Social integrate models characterize groups and group agents, as I will say, ‘from the inside’ (Hindriks 2008). They model groups as collections of individuals that are in some sense integrated. As Epstein discusses, collections of individuals might, for instance, form shared or joint intentions. Roughly speaking, Bratman argues that people who share an intention each intend that they perform an action and they do so in part because the other has the same intention. On Gilbert’s view, a joint intention consists of a joint commitment to do something that a collection of individuals has formed. Those who share an intention form a group.

It is not obvious to me, however, that they also form a group agent. Given his reductive account Bratman (2014) is certainly not committed to this. And although Gilbert provides a non-reductive account of joint intentions, it is not at all clear that she is committed to the claim that the groups she is concerned with are group agents that have a distinct ontological status. One reason to be cautious in this respect is that the groups at issue can have a fleeting existence. Two people who go for a walk together, to use Gilbert’s favorite example, might never form another joint commitment again. In light of this, it might be more attractive to adopt a more demanding conception of group agency. The view I favor is, roughly, that a group agent is a collection of individuals that has collectively accepted a decision procedure for making decisions together. The fact that such a procedure is in place provides a basis for acting together on a systematic basis. In light of this, it is plausible to regard groups that have adopted a decision procedure as group agents.

As Epstein presents them as proponents of social integrate models, he interprets their theories as accounts of group agents. List and Pettit (2011) present an account of group agency that centers on collective decision

procedures. Epstein discusses this account briefly and critically in chapter 14, but he does not return to it. To be sure, Epstein does discuss Tuomela's view and Tuomela regards group agents as authority systems, which requires them to have a decision procedure. However, this feature of Tuomela's proposal hardly gets any attention. The issue is important to Epstein's project, because he regards group agents as systems of practical activity. The groups with which Bratman and Gilbert are typically concerned with do not qualify as such, I believe, exactly because they do not involve collective decision procedures. In light of this, it would be interesting to know more about how Epstein conceives of group agents as systems of practical activity. Even though he is critical of List and Pettit, it seems that such an account would have to address the paradoxical features of collective rationality and collective decision-making that they are concerned with – in particular the fact that individual contributions to a collective decision-making process can easily give rise to collective decisions that are inconsistent.

Epstein is concerned with other issues. His complaint is that social integrate models such as these try to do too much when it comes to answering questions about ontology: 'they assume that the thing that constitutes the group must do all the explanatory work about properties of the group' (260). Epstein qualifies this as 'a damaging structural assumption' (258). The problem is that 'these theories continue to identify groups too closely with their constitutions' (260). Epstein's objection is that an account such as that of Gilbert might be plausible as an account of what a group agent is, but that it fails to answer other ontological questions such as:

When is a new joint commitment merely an added commitment to an existing group, and when does it issue in a distinct group? (260–61)

Membership changes, for instance, are awkward to deal with on an account like Gilbert's. ... [When a new person joins, does] the old group go out of existence and a new one come into existence? (260)

Thus, Gilbert's account is limited because, even if it adequately captures the way (some) group agents are constituted, it fails to answer questions about other important ontological issues such as coinciding groups, and membership change.

I am not sure how substantial Epstein's challenge is. First of all, the philosophers at issue might try and answer the questions Epstein asks in terms of the very accounts they have proposed. Gilbert might, for instance, say that if someone joins an existing commitment, then the old group is enlarged whereas if the relevant individuals form a new commitment they form a new group. What counts as a new commitment depends on its content, and possibly on whether other members concur on adjusting an existing

commitment so as to include a new member. The account she has developed allows her to say this, and it is not obvious to me that she needs to say more.

Secondly, as I have suggested earlier, perhaps these are accounts of groups rather than group agents. If so, they might not have to answer the questions Epstein asks. To be sure, those questions could be voiced with respect to accounts such as those of List and Pettit, or my own for that matter (Hindriks 2008, 2012, 2013). However, such accounts seem to be well placed to answer them. Membership change might, for instance, be settled by the collective decision procedures that lie at the heart of such accounts. A statute of a group agent might specify the criteria for its individuation, thereby providing an answer as to when a group agent coincides with it and when it is distinct. On my account, collective decision procedures and statutes can play these roles when the members of the group agent at issue have collectively accepted them.

2. Status models

Status models concern the assignment of statuses to group agents. A university, for instance, is an organization that has a designated educational status. That status is recognized widely and such recognition is necessary for a university to function as such. Students will not enroll without it. More fundamentally, in the absence of recognition by the government, an organization will not be legally allowed to confer university degrees. In light of the role that agents outside of the organization play in this regard, I have suggested that status models characterize group agents ‘from the outside’ (Hindriks 2008).³

Perhaps the most well-known status model has been proposed by Searle (1995). On his view, people attribute a status to an entity, which can thereby perform some function, which is why Searle uses the term ‘status function’. The attributed status function comes with deontic powers, such as the right to confer degrees or issue stock. Epstein characterizes Searle’s view as follows: ‘[S]ome groups are agents because we assign them the *status* of being agents, rather than because they have the right structure. This is roughly Searle’s approach’ (264). What is striking about this characterization is that Epstein takes Searle to be concerned not with the assignment of particular statuses, but with the assignment of agency as such.

Epstein’s complaint about status models is that agency is not a status that something can have simply because it has been attributed to it (270). He

³It should be noted, however, that statuses also play important roles within organizations. The tasks and roles that people take on can be seen as statuses, as they enable or require people who have the relevant status to perform certain actions (or refrain from doing so).

argues that it 'does not really make sense to say that we assign to a collective the status *being an agent, having an intention, or taking an action*' (265). To be sure, Epstein recognizes that some groups 'like courts and legislatures seem to be able to intend, act, and so on, despite poor integration among the members' (264). Even so, he insists that groups need to have some appropriate internal structure to be agents: 'Even "corporate agents" need to realize systems of practical activity, in order to plan, act, or have intentions. ... But in no case does it make sense to see *agency* or *the ability to act* as assigned, authorized, or projected' (265). Epstein goes on to argue that, when a group realizes a system of practical activity, 'an additional status assignment is not needed, *nor does it add anything*' (272, my emphasis).

When Epstein claims that assigning a status to a group that realizes a system of practical activity does not add anything, he is most charitably read as claiming that the group is a group agent due to the fact that it realizes a system of practical activity, and assigning a status to it does not have any bearing on this. Even so, it is important to appreciate that assigning a status to a group agent can add things of great significance. Organizations that are legally recognized can file lawsuits. Recognizing those who undertook a coup in another country as the legitimate government has rather important practical and principled consequences that bear directly on whether they do indeed constitute a new and legitimate government.

The simplest way to accommodate this insight is to regard status models as complementary to social integrate models in the following sense. In order to be a group agent, a group needs to be sufficiently well integrated and thereby meet the conditions of a suitable social integrate model. What status models add to this is that some such group agents have a status as such and are thereby also corporate agents. From this perspective, the insight that status models provide is that some group agents are corporate agents. Now, I regard it as an important task of social ontology to recognize this diversity among group agents. In light of his quest against one-size-fits-all approaches, it is a pity that Epstein does not appreciate the significance of the distinction between mere group agents and corporate agents. In fact, he sets corporations and universities aside (269).⁴ Status models provide

⁴Epstein believes 'that corporations and universities are not the best cases to choose', because it is unlikely 'that they are constituted by and only by people' (269). He goes on to argue that such agents 'bear a variety of constitutive relations to material things – people, assets, inventory, buildings, property, equipment, and more' (269). On my view, group agents are constituted only by agents (possibly other group agents). The other things Epstein mentions can be owned by group agents, but do not constitute them. In this respect, group agents are like individual agents that are not constituted by the things they own either. It may well be that in some looser sense entities other than agents can be constitutive of a group agent. If so, however, they will feature in the favorable conditions for constituting the relevant agent, and will not be part of its constitution base (Hindriks 2013).

an answer to a distinct question concerning the ways in which particular group agents are constrained and enabled to act. Even if Epstein is right that agency as such cannot be assigned by fiat, it appears that certain abilities or deontic powers can be.

3. Statuses without integration?

It is not at all clear that agency can be seen as a status. Epstein objects to status models because he believes that agency is not a status. For his objection to work, however, proponents of such models must actually subscribe to the view that it is. And it is not at all obvious that they do this. This is certainly not what I had in mind when I contrasted status accounts to social integrate accounts (Hindriks 2008). Perhaps, however, Searle is committed to this. A central component of my own Enactment Account of the constitution of group agents is the idea that the members enact the actions of a group agent – or nonmembers suitably authorized to do so (Hindriks 2013). Those members constitute the group agent. They do so only if further conditions are met, most saliently that they collectively accept a collective decision procedure. Searle does not specify any such requirements.

The general structure of Searle's account of institutions is that people impose statuses (ultimately – to allow for iterated statuses) on something that has no institutional status. In light of this, Epstein observes: 'If we assume that corporate agents are created by assigning statuses to substrates, that immediately raises the question, *what are the substrates*' (274). In an exchange, Barry Smith (Smith and Searle 2003) has pressed Searle on this, as some institutional entities do not have an obvious substrate. The most convincing case is electronic money. In response, Searle has embraced the criticism and accepted the claim that some statuses are not imposed on anything (Smith and Searle 2003). Searle extends this idea to corporate agents. In his view, statuses such as that of a corporation or a university are free-floating statuses that are not imposed on anything. The terms that we use for them are, in Searle's terms, 'freestanding' status terms. Now, on the assumption that Searle regards them as group agents, he is an appropriate target of Epstein's criticisms. Given that there is no substrate, there is no requirement that corporate agents have a particular internal structure. This means that they need not realize a system of practical activity. Hence, having a status can come apart from being a group agent in the sense of the social integrate models.

Epstein criticizes status models using a couple of intuition pumps. Imagine that we attribute the power to a pendulum 'to marry a couple when it swings to the right, and to divorce the couple when it swings to the left' (270). Or consider the game of spin the bottle in which the direction in which a bottle points indicates who is owed a kiss. In these cases, people attribute powers in a fairly arbitrary manner to objects, arbitrary in the sense that the powers are incidentally related to the entities to which they are assigned. Epstein goes on to consider the possibility that people attribute powers to collections of individuals in the same way – perhaps the direction in which three individuals are looking determines who is owed a kiss. What these thought experiments are meant to get at is the intuition that arbitrarily assigning powers does not constitute agency. Now, I have already granted that agency is not a feature that something can have simply in it being attributed to that thing. At the same time, it should be noted that the powers that agents have could be arbitrary to a high degree. The powers at issue are socially constructed. And social construction has relatively few constraints. In light of this, however, Epstein's claim about agency can be reformulated as the claim that agency is not a social construction.

In response, I point out that certain agential powers are social constructs. Even so, it seems plausible that there are limits to the agential powers that can be attributed by fiat. Miller (2001) considers the following two cases. The first is based on Peter Sellars' movie *Being There* in which a gardener ends up being treated and recognized as the president of the United States. At some point the gardener is elected as the president, even though he has no understanding of the political system and no leadership skills (Miller 2001, 188). The second case concerns an incompetent surgeon. This person is fully accredited as a surgeon, but he is not able to perform a successful operation. He has the deontic powers, but not what Miller calls 'the substantive functionality' (2001, 186). These cases reveal that there is some leeway insofar as the relation between a status and its substrate is concerned. Miller accepts that the gardener in the first example really is the president. However, he argues that the alleged surgeon is not really a surgeon. Apparently, substantive functionality is a prerequisite for being a surgeon, but not for being a president. I am not convinced. The person at issue will be allowed to practice as a surgeon, and this may well be the defining feature of being a surgeon. Be it as it may, the president example suffices for establishing that it can in fact happen that an entity has a status it should not have, because it cannot adequately perform the relevant actions.

This line of thought could be developed so as to argue that collections of individuals that do not have the appropriate internal structure can be group agents after all. I am reluctant to push the point this far. Making decisions that meet – perhaps fairly minimal – requirements of rationality seems integral to our notion of agency. If we reject this option, however, we are left with a puzzling possibility. It appears that people can attribute powers to act to entities that are not agents. An only loosely connected bunch of people might, for instance, have the power to file a lawsuit as a legal entity. I suppose that Epstein will reject this possibility. This might, however, be too quick. The relevant entities consist of agents. And it can happen, or so I propose, that particular individuals cease the opportunity to utilize some status for their own purposes acting as if they are members of proper group agents. In other words, it might be that statuses assigned to entities that are not agents are enacted nevertheless. Status models help us to appreciate this unexpected possibility.

Epstein correctly argues that agency is not a status that can be attributed to an entity. Furthermore, it makes little sense to attribute a status to an entity that is not an agent. However, this does not show that it cannot be done. The fact that it makes little sense and is thereby in some sense undesirable is important for the purpose of institutional design. Statuses play an important role in social reality because they constrain and enable certain forms of behavior. Often such behaviors have a normative dimension in that they are permitted, required, or forbidden. Ideally the assignment of a status meets certain constraints – e.g. that a surgeon is able to perform surgery and that a status be attributed to collections of individuals that do in fact form a group agent. What is more, ideally the group agent is particularly well placed to realize some social value, such as the creation and dissemination of knowledge. In light of this, it is crucially important to carefully specify the conditions that an entity has to meet in order to have a status. It would be a mistake, however, to regard desiderata as conceptual constraints on the statuses that can be attributed to an entity.

4. The ontological significance of corporate agents

The conditions that an entity has to meet in order to have a status are the grounding conditions that play a central role in Epstein's account. One of his main claims about the grounding conditions of social entities is that they often extend beyond individual agents and their attitudes. When commenting on groups, Epstein claims that 'facts about a group are not determined

just by facts about its members' (272)⁵ At this point it is important to appreciate that status models are in fact in an excellent position to do justice to this.

In my version of the status model, I distinguish between status rules and base rules (Guala and Hindriks 2015; Hindriks and Guala 2015). Status rules capture the behavioral dimension of statuses, the powers that come with having a certain status. For instance, legal entities such as Limited Liability Companies can sue in their own name. Base rules, in contrast, specify the basis of a status, its constitution base or substrate – in Epstein's terms its grounding conditions. There is no reason why, in the case of a corporate agent, the conditions that a base rule specifies should pertain only to its members or their attitudes. A particular collection of individuals can, for instance, come to constitute a Limited Liability Company in part because the Secretary of State imposes this status on them (Hindriks 2013). On my view, a constitutive rule consists of a base rule and a status rule.⁶

As people that are external to a corporate agent play a crucial role in constituting it, status models can be used to provide partial support for Epstein's core claim that groups do not depend on their members only. Epstein's arguments would have benefited from a more extensive and more positive appreciation of status models and the conditions under which they apply. A number of his arguments seem to apply to corporate agents, and to corporate agents only. In light of this, it would have been good had Epstein endorsed the distinction between group agents that are corporate agents and those are not (even if simply by regarding status models as

⁵Epstein defends the stronger claim that some social entities are constituted not only by individual agents but also by natural entities. On the basis of this claim, he concludes that ontological individualism is false. In response to an earlier formulation of this claim, I have defended ontological individualism. As I failed to see what natural factors have to do with holism, I reformulated ontological individualism as the claim that 'social objects and properties are determined (only) by individual *and physical* objects and properties' (Hindriks 2013). Epstein now clarifies his position by stating that '[d]enying ontological individualism does not mean endorsing "ontological holism"' (37). However, what exactly the intermediate position is remains unclear. I find it more insightful to take the target of Epstein's argument to be psychologism – the view that social phenomena can be exhaustively determined by individual agents and their attitudes. The falsity of psychologism is consistent with ontological individualism (including non-reductive versions of individualism).

⁶Epstein's core argument in favor of the distinction between grounds and anchors consists of what he calls 'a dilemma for constitutive rules'. He argues that a constitutive rule cannot specify the complete set of grounds of a social fact. The core problem is that, if a constitutive rule is to specify all the grounding conditions of a social fact, it should refer to the rule itself, in particular to the fact that the rule is collectively accepted. This is problematic, Epstein suggests, because it gives rise to an infinite regress. In light of this, Epstein rejects conjunctivism, the view that anchors are among the grounds of social facts. However, a conjunctivist need not be committed to the claim that a constitutive rule specifies all grounding conditions of a social fact. Instead, he might claim that the grounds consist of a conjunction of conditions *X* and collective acceptance of the rule that specifies these conditions *X*. To be sure, on this picture there is a particular hierarchy between grounding conditions – it is only due to collective acceptance of a particular rule featuring conditions *X* that conditions *X* have to be met. However, *pace* Epstein (123n11), the very fact that there is such a hierarchy does not make the view that collective acceptance is a grounding condition incoherent.

complementary to integrate models, as discussed in Section 2). Consider, for instance, his argument that membership in the Supreme Court is determined by factors external to the collection of individuals who constitute it, in particular by the constitution and Judiciary Acts (154, 223). On my account, it is exactly because the Supreme Court has a status that figures in the relevant legal documents that its membership is in part externally determined.

Another one of Epstein's arguments concerns the possibility of group agents without members. He imagines a moment in time at which all the members of the Supreme Court have resigned, and new justices are to be appointed. Epstein maintains that 'a group is a thing constituted by and only by individual people' (149; emphasis deleted). However, he also argues that 'a group can persist even while it has no members at all' (169). Even though this sounds somewhat paradoxical, the two claims are consistent, because Epstein holds that 'groups do not have to be constituted at all times when they exist' (177). In a similar vein, Epstein argues that 'what qualifies groups as material objects ... is precisely that they are materially constituted. Groups just also have the feature that they do not *always* have to be materially constituted' (181).⁷

The point to appreciate is that the Supreme Court can persist without members only because it is an institution. A group agent that does not have an institutional status dissolves as soon as its members cease to be appropriately integrated. Institutions can exist without being instantiated. Consider as another example of an uninstantiated institution the papal interregnum, the period between the resignation or death of a pope and the election of a new one. The papacy remains in existence even though there is no pope during this period. Elsewhere I have argued that this is due to the fact that the constitutive rule of this institution remains in place (Hindriks 2013). More generally, it is only because these entities are institutional entities that involve statuses that they can exist without being constituted in one way or another.

The upshot is that a number of Epstein's arguments presuppose the notion of a status. This does not hold, however, for Epstein's core claim about groups – that few if any of them are exhaustively determined by the individual members and their attitudes. The very fact that many if not all

⁷The question that arises at this point is: What is the ontological status of a group agent that exists without being constituted? Epstein considers the option that a group is some kind of abstract object. He rejects this and goes on to argue that 'when the group has no members, there is no object at all' (170). The problem with this answer is that it suggests that there is no-thing at all. That conflicts with Epstein's claim that the groups at issue exist. A more attractive answer, I propose, is that the institution exists as a concrete particular without being instantiated.

group agents employ collective decision mechanisms suffices to make this point, as List and Pettit's (2011) work reveals. As my earlier comments on Gilbert's conception of groups can be taken to suggest, I doubt whether it holds for groups that do not employ such a procedure. It may well be that such groups are in fact exhaustively determined by the individual members and their attitudes. To be sure, Epstein admits that a few groups might be 'grounded exclusively by facts about individual people' (151). Even so, I find it striking that this might be true of groups that fit the accounts that feature early on in chapter 16, which is supposed to corroborate the claim at issue.

The deeper point that surfaces from this discussion is that how diverse the theories must be that we need for answering a diverse set of questions depends on the entity under consideration. When it comes to groups, perhaps the first step to be taken is to distinguish between kinds of groups. And when it comes to theories about such groups, it is important – as Epstein argues – to carefully attend to the kinds of questions such theories answer. Status models are perhaps not particularly useful for answering questions about group agency. They are, however, suitable for inquiring into a particular kind of group agency, corporate agency. This kind of agency is of pre-eminent importance for Epstein's project. For instance, they nicely illustrate how the grounding conditions of at least some groups extend beyond their members and their attitudes. Furthermore, they are the only group agents that can exist without members.

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